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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2748 OF 2000

Shri. Murlidhar Ramkrishna Gathe,
C/o. Dy. Transport Commissioner
and Controller, Govt. Transport
Services, Sir Pochkhanwala Road,
Worli, Mumbai 400 025. ... Petitioner

Versus

1. State of Maharashtra through its
Secretary, Tribal Development Deptt.
Mantralaya, Mumbai 400 032.

2. Chairman,
Committee for Scrutiny and
Verification of Tribe Claims,
Maharashtra State, Nagpur.

3. Tahsildar and Executive Magistrate,
Jalgaon (Jamod), District Buldhana.

4. Dy. Transport Commissioner and
Controlller, Govt. Transport Services,
Sir Pochkhanwala Road,
Worli, Mumbai 400 025. ... Respondents

Mr. R.K. Mendadkar for Petitioner.

Mr. V.A. Gangal, Special Counsel with Mr. R.D. Rane, Government Pleader for R. Nos. 1 to 4.

**CORAM: F.I. REBELLO &**
**R.V. MORE,JJ.**
**DATED: JANUARY 18, 2007**

**Oral Judgment : (Per F.I. Rebello,J.):**

. The Petitioner was employed in the office of the Respondent No. 4 against a reserved post on the basis that he belongs to Thakur S.T. which is a notified scheduled tribe. The caste certificate was sent for verification to the relevant committee.

The committee on considering the record held that the Petitioner did not belong to Thakur S.T. The Petitioner aggrieved by the said order, preferred a petition before this court being Writ Petition No. 6359 of 1999. After hearing the parties, this court was pleased to dispose of the same by order dated 14.2.2000. We may refer to paragraph 6 of the order which reads as under :

> "In view of the above, the Scrutiny Committee will look into the record afresh and decide as to whether the petitioner belongs to this particular Scheduled Tribe on the basis of the documents he has produced. It will be open to the petitioner to produce whatever additional material he wants to produce before the Committee, whereafter the Committee on hearing the petitioner will pass a speaking order. ....."

. Subsequent to this order on remand, the Petitioner pursuant to direction to appear for hearing on 6.5.2000, submitted his representation dated 6.5.2000. The Petitioner also pointed out to the Committee that this court had directed the committee to decide whether the Petitioner belongs to Thakur S.T. on the basis of the documents which

the Petitioner may produce. The Petitioner produced several documents. The committee thereafter met and considered the documents given by the Petitioner herein. The committee noted that from the documents it was not possible to hold as to whether the Petitioner or his father belongs to Thakur S.T. and as such in the absence of any conclusive documentary evidence, the affinity test was required to be considered. The order of the Committee then notes that during the time of hearing, the candidate had furnished the information on the traits and characteristics as mentioned on Page No. 5 being points 1 to 8. The committee on considering the said material held that the information furnished by the candidate, does not show any affinity towards Thakur S.T. and in the light of that rejected the Petitioners' caste claim as belonging to Thakur S.T. It is this order which is the subject matter of the present petition.

2. At the hearing of this Petition, on behalf of the Petitioners, it is firstly submitted that the Committee did not take into consideration the direction No. 5 of Para 13 in the judgment of the Supreme Court in **Madhuri Patil and another Versus Addl. Commissioner, Tribal Development and Others, (1994) 6 Supreme Court Cases 241** which reads as under :

" Each Directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in over-all charge and such number of Police Inspectors to investigate into the social status claims. The Inspector would go to the local place of residence and original place from which the candidate hails and usually resides, or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may; be, He should also examine the school records, birth registration, if any. He should also examine the parent, guardian or the candidate in relation to their caste etc. or such other person who have knowledge of the social status of the candidate and then submit a report to the Directorate together with all particulars as envisaged in the pro forma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial

of dead bodies etc. by the cases or tribes or tribal communities concerned etc."

. Secondly it is submitted that considering the Judgment of the Supreme Court in the **State of Maharashtra and Others Versus Ravi Prakash Babulalsingh Parmar and Anr. in Civil Appeal No. 789 of 2005**, 2006 AIR SCW 6093, the Petitioner ought to have been given opportunity of leading oral evidence. The failure to do so, has resulted in miscarriage of justice and consequently the order of the Committee is liable to be set aside.

. Thirdly, it is submitted that there was overwhelming documentary evidence to show right from the time of his great grand father that the Petitioner belongs to Thakur S.T. which the committee has not taken into consideration.

. Lastly it is submitted that the Committee has not given any reason as to why the information given by the Petitioner is not related to Thakur S.T. It was also pointed out that the Committee has misdirected itself in examining as to whether the Petitioner belongs to Ka-Thakur/Ma-Thakur. It was not the case of the Petitioner that he belongs to the said S.T.

. On behalf of the Respondents, reply has been

filed by Shri. Janubhau Punaji Puram, working as a Senior Research Officer in the office of the Caste Scrutiny Committee, Nagpur.

. We may now consider the arguments advanced on behalf of the Petitioner.

3. It is the case of the Petitioner that the Committee did not consider the judgment in Kum. Madhuri Patil (supra) and more specifically Direction No. 5 of Para 13, where it was directed that the Vigilance Cell as set out therein should conduct an enquiry. The Petitioner has not approached this court for the first time. He had earlier approached this court challenging the order of the committee in Writ Petition No. 6359 of 1999. That was not his grievance then. The learned Bench of this court after hearing the counsel for the parties, was pleased to set aside the order and remanded the matter back to the committee for disposal in terms of the said order. The Petitioner thereafter made representation on 6.5.2000 and forwarded various documents. It was not the grievance of the Petitioner before the committee that vigilance enquiry ought to be conducted or that the request to conduct vigilance enquiry was rejected. This court considering the contentions advanced had remanded the matter back to the

committee. Considering the terms of the remand order, it would not have been open to the committee, a quasi judicial body to act contrary to the order of this court. The committee was bound to follow the order of this court which the committee has done. Apart from that, the Petitioner was given a full opportunity of producing his documents. The committee also gave opportunity to the Petitioner to produce relevant material as to traits, characteristics, ethnic linkage and affinity test to Thakur S.T. It is not the case of the Petitioner that he had given any information other than that is set out in the order of the committee. The only grievance of the Petitioner is that the committee has not given reasons as to why the information given is not associated with Thakur S.T.

. We called on the learned counsel for the Petitioner to show from the Petition any averment by the Petitioner contending that what was reproduced in the order are affinities to Thakur S.T. There are no such pleadings. In our opinion, therefore, the contention as now being urged is merely an afterthought. The Petitioner was allowed to lead evidence both documentary and oral. The Petitioner furnished information, as to his Tribal traits and characteristics and the same was recorded. The Committee recorded a finding that the material

produced does not show affinity towards Thakur S.T. Reply has been filed by Senior Research Officer in the office of the Caste Scrutiny Committee. Reference is made to the documents produced by the Petitioner before the committee being school leaving certificate No. 14671. Column No. 2 in that certificate reads as under:

> "Caste and /sub-Caste only in the case of pupil belonging to Backward Classes and category among backward classes (e.g. S.C./S.T. etc)."

In the document produced front of that column no caste/sub caste is shown. This document would show that the Petitioner joined Shri. Arjan Khimji National High School, Khamgaon on 22.6.1979 and left the school on 30.4.1983 after having completed the course of S.S.C. Examination.

. The Petitioner in the information sought for did not disclose that he belonged to Thakur S.T. On the other hand, the document in our opinion, would disclose that the Petitioner did not make any claim that be belongs to Thakur S.T. or any other backward caste. In the local surroundings where the Petitioner’s caste or tribe would be known, it would lead to an inescapable conclusion that the

Petitioner did not belong to the backward class. This court has judicially recognised, that the word or surname "Thakur" is shared by both forward and backward communities. The burden of proving that the person belongs to a S.T./S.C./O.B.C. lies heavily on the person seeking the certificate. The role of the Vigilance Committee is to conduct an enquiry to ascertain and verify the material produced by the candidate including as to traits and characteristics claimed. If the material and information on traits, characteristics , customs, deities and other information did not relate to Thakur S.T. further verification of that material normally would be uncalled for. The law as declared in Madhuri Patil (supra) would require verification of the information given. If that information was associated with the Thakur S.T. then to rule out the information given was based on bookish knowledge, the vigilance enquiry is required to be conducted to establish that the evidence produced is genuine. Once the committee with whom are associated experts, conversant with the anthropological and ethnological traits and other characteristics of the community, rule out the association of the Petitioner to that community, the burden is on the Petitioner to establish otherwise. That burden has not been discharged. There is not even a specific challenge to those specific findings

of the committee except a bald assertion that the committee was wrong. We are therefore, clearly of the opinion that considering the order of remand, the committee could not have done that exercise. The argument could have been countenanced if at the hearing on remand any additional information linking the Petitioner to the Thakur S.T. was produced which was not verified. The opinion of the committee on tribal traits and characteristics, coupled with the documentary evidence considered, would disclose that the order on that count does not suffer from any illegality.

4. The next contention is about the Petitioner not being given an opportunity to lead oral evidence as explained in the case of Raviprakash Parmar (supra). We are really not impressed with that argument. The Petitioner was given opportunity to produce documentary evidence. It was always open to the Petitioner to produce any other evidence that the Petitioner wanted to. The committee itself examined the Petitioner at the hearing as to his traits and characteristics. It is not for the committee to call on the Petitioner to lead evidence. The burden was on the Petitioner if he so desires to seek such opportunity. The Judgment in Raviprakash Parmar (supra) is in the context that where from the documentary evidence, it is not possible to hold as

to whether the candidate belongs to Thakur S.T. an opportunity can be given to the Petitioner to lead oral evidence. The Petitioner was examined by the committee. The Petitioner did not seek any further opportunity to lead evidence What evidence to lead or not to lead is on the candidate. The Petitioner did not seek any opportunity to lead oral evidence. In our opinion, the ratio of that judgment, also would not be applicable to the facts of the present case.

5. The third submission was that the documentary evidence on record by itself was sufficient to hold that the Petitioner belongs to Thakur S.T. We have noted earlier and we may repeat that the documents on which the Petitioner relied upon and which are annexed to this petition did not indicate that the Petitioner belongs to Thakur S.T. These documents either showed that the Petitioner is Thakur or Hindu Thakur. That by itself would not mean that the Petitioner belongs to Thakur S.T. On the contrary, as noted earlier, the school leaving certificate issued on 30.4.1983 and obtained in the vigilance enquiry would clearly go against the Petitioner. It is not possible to accept that the Petitioner who had joined a secondary school, if he genuinely belonged to S.T. would omit to give such vital information about his status as Thakur S.T. while

giving details which were required to be given. Another aspect of the matter as pointed out in the affidavit in reply of the Research Officer is that the Petitioner hails from Khamgaon in Buldhana District. It is pointed out that in Khamgaon, District Buldhana, there were no families of scheduled caste or scheduled tribes. Also before the area Restriction Removal Order of 1976 came into force, the tribe Thakur S.T. was restricted only to five districts namely in (a) Ahmednagar District in Akola, Rahuri and Sangamner Taluka, (b) in Kolaba District (now Raigad), Karjat, Khalapur, Pen, Panvel and Sudhagad Talukas and Matheran (c) In Nashik District Igatpuri, Nashik and Sinnar Talukas (d) In Thane District Thane, Kalyan, Murbad, Bhiwandi, Vasai, Wada, Shahapur, Palghar, Jawhar and Mokhada talukas. It is not the case of the Petitioner that his family migrated to Khamgaon from any of these areas. It is his contention that the family hails from Khamgaon. The reply filed also discloses following information about population of some of the scheduled tribes in the State as on 17.12.1981 after the removal of area restrictions. We may reproduce the same.

Population of Schedule Tribes in Maharashtra

(As per 1971, 1981 census)

(Population in Lakhs)

| Sr.No. | Scheduled Tribes | Population 1971 | 1981 |
|---|---|---|---|
| 18. | Gond, Rajgond, Arakh | 3,31,798 | 11,62,735 |
| 19. | Halba, Halbi. | 7,205 | 2,42,819 |
| 27. | Kolam, Mannervarlu | 56,061 | 1,18,073 |
| 29. | Koli Mahadeo, Dongar Koli | 3,39,855 | 7,47,448 |
| 35. | Naikda, Nayaka. | 9,315 | 35,053 |
| 44. | Thakar, Thakur | 1,78,805 | 3,23,191 |
| | Total Maharashtra | 29,54,249 | 57,72,038 |

. From this it will be clear that the population of Thakur S.T. rose from 1,78,805 in the year 1971 to 3,23,191 in the year 1981. This cannot be explained as a normal reproduction process leading to hte increase in the population of S.T. within 10 years. Scheduled Tribes by their very nature stay close to their original habitat unless have migrated for work or education which very few still do. This sudden spurt, can reasonably be explained, that persons who did not belong to Thakur S.T. because they also bore a surname Thakur made false claims as belonging to Thakur S.T. though they did not belong to Thakur S.T. We are clearly of the opinion that the omission by the Petitioner in not claiming that he belonged to Thakur S.T. in his school records would be a very strong factor against the Petitioner. There is otherwise no other material to hold that the Petitioner belongs to Thakur S.T. On that count also, that contention must be rejected.

6. The last submission is that the Committee has not given any reason as to why the information given by the Petitioner does not show why he is not related to Thakur S.T. We had partly dealt with the argument earlier. In our opinion, the committee includes experts. We could have understood if the Petitioner in the Petition had made specific averments that information furnished are the traits and characteristics of Thakur S.T. alone. There is no such averments nor are these allegations of mala fides alleged against the Members of the committee. The committee considered the material produced recorded a finding that the Petitioner does not belong to Thakur S.T. There is no illegality in the findings recorded. Merely because the Committee also asked questions of the Petitioner, whether he belongs to Ma Thakur/Ka Thakur by itself can not result in holding that the committee addressed itself to a wrong question. The Committee was examining the Petitioners affinity towards Thakur S.T. and to avoid injustice, information was also sought, as to Ma-Thakur/Ka Thakur ST’s which are also included in the Presidential notification. That contention must also be rejected.

7. In the light of the above, we find no merit in this petition and consequently rule discharged. There shall be no order as to costs.

**(R.V. MORE,J.)** **(F.I.REBELLO, J.)**